

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 177 be amended to read as follows:

- 1 Page 4, line 10, after "commission," insert "**or the aggrieved**
2 **party,**".
3 Page 4, delete lines 15 through 25 and begin a new paragraph and
4 insert:
5 **(e) The metropolitan development commission's review of**
6 **disputed issues of fact must be confined to the commission record**
7 **for the commission action supplemented by additional evidence**
8 **taken under subsection (f). The metropolitan development**
9 **commission may not try the cause de novo or substitute its**
10 **judgment for that of the commission.**
11 **(f) The metropolitan development commission may receive**
12 **evidence, in addition to that contained in the commission record**
13 **for review, only if it relates to the validity of the commission action**
14 **at the time it was taken and is needed to decide disputed issues**
15 **regarding one (1) or both of the following:**
16 **(1) Improper constitution as a decision making body or**
17 **grounds for disqualification of those taking the commission**
18 **action.**
19 **(2) Unlawfulness of procedure or of the decision making**
20 **process.**
21 **This subsection applies only if the additional evidence could not, by**
22 **due diligence, have been discovered and raised in the commission**
23 **hearing.**
24 **(g) The metropolitan development commission may remand a**
25 **matter to the commission before final disposition of a petition for**
26 **review with directions that the commission conduct further fact**
27 **finding or that the commission prepare an adequate record if:**
28 **(1) the commission failed to prepare or preserve an adequate**
29 **record;**
30 **(2) the commission improperly excluded or omitted evidence**
31 **from the record; or**

(3) a relevant law changed after the commission action and the metropolitan development commission determines that the new provision of law may control the outcome.

(h) The burden of demonstrating the invalidity of commission action is on the party asserting invalidity.

(i) The validity of commission action shall be determined in accordance with the standards of review provided in this section, as applied to the commission action at the time it was taken.

(j) The metropolitan development commission shall make findings of fact on each material issue on which the metropolitan development commission's decision is based.

(k) The metropolitan development commission shall grant relief under subsection (l) of this section only if it determines that a person seeking relief has been prejudiced by a commission action that is:

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unsupported by substantial evidence.

(l) If the metropolitan development commission finds that a person has been prejudiced under subsection (k) of this section, the metropolitan development commission may set aside a commission action and:

(1) remand the case to the commission for further proceedings; or

(2) compel commission action that has been unreasonably delayed or unlawfully withheld."

Page 4, line 26, delete "(g)" and insert "(m)".

Page 4, line 31, delete "(h)" and insert "(n)"

Page 4, delete lines 34 through 38.

(Reference is to SB 177 as printed January 29, 2010.)

Senator BREAUX